IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31/01/2003

Coram

The Honourable Mr. Justice R.JAYASIMHA BABU
and
The Honourable Mrs. Justice N.V.BALASUBRAMANIAM

L.P.A. No. 142 of 2000
and
C.M.P.Nos.12835 of 2000 and 17949 of 2002

1.K.A.Selvanachi
2.Subbalakshmi ..Appellants

-Vs-

1.Dr.S.R.Sekar
2.S.Kanagambal ..Respondents

Appeal against the judgment and decree of the learned single Judge dated 29.3.2000 in A.S.No.1278 of 1986.

!For Appellants : Mr.S.Subbiah

^For Respondent : Mr.N.S.Varadachari

:JUDGMENT

(Delivered by R.JAYASIMHA BABU, J.)
This appeal arises from a suit brought by the first respondent for declaration of his title to a house, more fully described in the plaint schedule. The Trial Court decreed the suit and that decree was affirmed in appeal. The present appeal is by defendants 2 and 3, who have purchased the property from defendant No.1.

2. There is no dispute about the fact that the suit schedule property all along stood in the name of the mother of the plaintiff, who is defendant No.1. The site had been purchased in her name, the building plan had been sanctioned in her name and all taxes were shown in the records as having been paid by her. Her husband, the father of the plaintiff, was an employee of the Government. He also had ancestral properties.

3. The plaintiff, his two brothers and their father entered into a partition under a registered deed dated 19.2.1969, in which it was stated that though the house stood in the name of the mother, it in fact belonged to the

father and that that property was being allotted to the share of the father. The mother had attested the document, but was not a party to the same. There is nothing in the document to show that she had knowledge of its contents. Almost twelve years later, in the year 1981, an unregistered document was drawn up, described as a family arrangement, to which the plaintiff, his two brothers and their father were parties, wherein it was stated that the plaintiff had sent a notice making certain claims and in order to resolve the dispute raised by him the family arrangement was being entered into under which the plaint schedule property was being allotted to the share of the plaintiff. That document was not registered. After that document was drawn up, the plaintiff attempted to have the title of the property transferred to his name. But that request was rejected by the letter dated 8.8.1981, marked as Ex.B-11. Thereafter, the plaintiff does not appear to have made any effort to assert title to the property. Though the plaintiff, in the course of his deposition, claimed that the tenant had been paying rents to him, no documents were produced to substantiate that assertion.

4. The property, even after the partition in which it was recorded that the property belonged to the father and had been allotted to his share, continued to remain in the name of the mother who, when she was examined in this suit as D.W.1, has stated that she had no knowledge of the contents of the partition deed; that the property continued to belong to her and that she came to know about the purported allotment of that property to her husband's share only after the present suit was instituted by the plaintiff. The plaintiff did not place any material before the Court to show that his mother had knowledge of the contents of the partition deed and had accepted the same at any point of time prior to the institution of the suit. There is no material on record to show that the mother had at any time accepted the property as belonging to her husband. On the other hand, the records produced in the trial Court showed that she had filed a petition against the tenant of the property in the year 1982, two years prior to the institution of the present suit, which would clearly indicate that she was asserting her title to the property and had not recognised either her husband or her son as the owner of the same.

5. On 22.12.1982, the first defendant/mother executed a sale deed in favour of the present appellants, who were defendants 2 and 3. Those defendants subsequently obtained possession of the property also and were in possession on the date of the suit and thereafter as well.

6. The trial Court as also the learned single Judge proceeded on the footing that the attestation of the partition deed by the mother resulted in an estoppel, operating against her from denying the title of her husband and, therefore, the father to whom that property was allotted at the partition had acquired valid title to the same under the partition and on the strength of that could enter into the family arrangement in the year 1981 under which the property was re-allotted to the share of the plaintiff. The Courts have proceeded on the assumption that the family arrangement was a valid one. The father and the two brothers were not parties to the suit and none of them had been examined in support of the plaintiff's case.

7. Attestation of a document does not, in our view, entitle any of the parties thereto or any one claiming under them to regard such attestation, per se, as acceptance on the part of the attestor that the contents of the document are true and that such attestor had knowledge of the same unless there is evidence before the Court either intrinsic in the document itself or extrinsic to show that the attestor had knowledge of the contents and had accepted the same as correct.

8. Nearly eighty years ago, the Privy Council in the case of Pandurang Krishnaji v. Markandeya Tukaram (1922) LXII MLJ 436, had held inter alia thus:-

"..they think it is desirable to emphasize once more that attestation of a deed by itself estops a man from denying nothing whatever excepting that he has witnessed the execution of the deed. It conveys, neither directly nor by implication, any knowledge of the contents of the document, and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects. It is, of course, possible, as was pointed out by their Lordships in the case of Banga Chandra Dhur Kiswas v. Jagat Kishore Chowdhuri (1916) L.R. 43 I.A. 249 that an attestation may take place in circumstances which would show that the witness did in fact know of the contents of the document, but no such knowledge ought to be inferred from the mere fact of the attestation."

Attestation, therefore, does not imply that the attestor had knowledge of the contents of the document or that the attestor accepts the correctness of whatever is stated therein.

9. The learned single Judge placed reliance on the decision of a single Judge of this Court, Ismail, J., as he then was, in the case of Ramasamy Gounder v. Anantapadmanabha Iyer (1971-1-M.L.J., 392), wherein the learned judge referred to decisions rendered by learned single Judges in two old cases viz., Sathasiva Iyer, J. in Kandasamy v. Nagalinga (1912) I.L.R., 36 Mad.564 and Narayana v. Rama I.L.R. (1915 38 Mad., 396 and that of Kumaraswami Sastri, J., in the case of Nayakammal v. Munnaswamy Mudaliar (1924) 20 L.W. 222. Sathasiva Iyer, J. in the case of Kandasamy referred to the "ordinary course of conduct of Indians in this presidency" and held that attestation must be treated prima facie as a representation by the attestor that the title and other facts relating to title recited in the document are true and that they will not be disputed. The learned judge also observed that in his long experience as judicial officer, if the attestor has an existing interest in the property dealt with in the document attestation was always made in order to bind him as to the correctness of the recitals. Kumaraswami Sastri, J., in the case of Nayakammal, observed that "it is the commonest thing in this country for attestations to be obtained from persons having a possible interest in the property with the object of binding them later on" and that "I have rarely come across a case where a person having an interest present or contingent has attested the deed without enquiring into its contents".

10. Those observations made by the learned judges cannot be treated

as having laid down a proposition of law that all attestors of all documents must be imputed with knowledge of the contents thereof and even when such contents are adverse to the interest of the attestors so that the attestors are estoped from questioning the same solely by reason of the fact of their having attested the document. Observations based on personal perceptions and experience of individual Judges cannot be elevated to the status of Rules of law. Custom and usage are always a matter of evidence and strict proof

11. Those observations are also clearly inconsistent with the law that had been laid down by the Privy Council in the case of Pandurang Krishnaji and cannot be regarded as having laid down such inconsistent law. Moreover, whatever may have been the practice in the years 1912 or 1924, the same cannot be regarded as the practice even eighty years later, when the awareness of the requirements of law is far greater than what it was eighty years ago. Further, on principle it is not possible to hold that attestation of a signature is to be deemed as acceptance of the contents of the document which has been executed by the signatory whose signature is attested by the attestor. There should be something more than mere attestation to impute such knowledge of the contents so as to bind the attestors.

12. We have already noticed that in this case there is no material at all to show that the mother who attested the partition deed was aware of the contents thereof or had accepted the same. When she was examined as D.W.1 in this case, she specifically stated that she had no knowledge of the contents of the partition deed and that she came to know of it only when the suit was filed in the year 1984. 13. The title of the plaintiff's mother, therefore, was wholly unaffected by the recitals in the partition deed to which she was not a party and that partition deed did not have the effect of divesting her of her title and vesting the same in her husband. The mother also cannot be regarded as the benamidar of her husband, as there is no material at all to show that she had accepted her position as benamidar and there is no decree of any Court declaring the title of the father as the owner despite the fact that the title deeds and the entries in the Municipal records stood in the name of the mother. The subsequent family arrangement does not improve the matter in any way as the father who himself did not have title to the property prior to the partition could not have parted with the same in favour of his son. The mother had at all times remained the owner of the property. She had dealt with the property as hers as evidenced by the petition filed by her against the tenant in the year 1982. It is also evident from her deposition that her actions had the implicit support and acceptance of her husband as they were living together at all times. 14. The plaintiff cannot assert title to the property on the strength of the family arrangement and the partition deed that preceded it. The plaintiff has failed to establish his title. The plaintiff not being entitled to the declaration sought, no question of granting any consequent relief arises for consideration.

15. The appeal is allowed and the judgments and decrees of the trial Court and of the appellate Court are set aside. The suit filed by the plaintiff is dismissed.

Index:Yes

Website:Yes

To

1.The II Addl. Subordinate Judge, Madurai.

2.The Record Keeper, V.R.Section, High Court, Madras.

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